

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 28-10-1996.

SPECIAL CIVIL APPLICATION No. 7010 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PRABHUBHAI DAYARAM PATEL

Versus

STATE OF GUJARAT & ANR.  
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Appearance:

Ms. V.P. Shah for Mr.B.J. Jadeja, Advocate for the  
Petitioner.

Mr. Sompura, A.G.P. for the Respondents.  
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CORAM : MR.JUSTICE H.R.SHELAT

28/10/96

ORAL JUDGEMENT

The competent officer, under the Urban Land Ceiling Act (for short 'the Act'), passed the order on 21st July 1987, refusing to grant the permission to retain the land, and in appeal the appellate authority on 27th July 1988 refused to review the order; consequent upon which the present petition has been filed under Article 226 of the Constitution of India challenging the legality and propriety of the orders.

2. The facts in brief, leading the present petitioner to prefer the petition, may be stated. When the Act came in force, the petitioner was holding certain lands. He was also holding the lands in excess, but for the retainment of the excess lands, he applied for necessary permission under Section 21(1) of the Act because he wanted to construct the dwelling units for the weaker section of the society. The application for the permission was rejected by the competent authority on 21st April 1987 on the ground that the land in question was required by the Surat Municipal Corporation for sewage treatment plant. The petitioner being aggrieved by such order preferred the appeal but the appellate authority also refused to interfere with the order passed by the competent authority. The petitioner has, therefore, preferred this application calling in question both the orders passed.

4. Section 20 of the Act gives power to the State Government to allow a person to continue to hold vacant land in excess of ceiling limit which he would otherwise be deprived of the vacant land in excess of ceiling limit owing to the bar provided u/s. 3. What relevant consideration should weigh much while exercising power to grant exemption u/s. 20 of the Act when public institution or local body is likely to put forth or has already put forth its claim to have the land which is counter to the claim of the owner of the land, is the crucial question posed before this Court, because the petitioner seeks exemption on the ground that he wants to use the excess land for the construction of dwelling units for the weaker section of the society; but the Surat Municipal Corporation proposes to have the land for sewage disposal work. In such cases, the object of the Act should be borne in mind and the claim out of many promoting the object of the Act should be preferred, and if both the claims in one or the other way are found promoting the object of the Act, the claim having preferential value, looking to the circumstances and requirements of the people or having outvieing or dominating effect should be preferred. If both the claims are running parallel, decisive factor will be dissimilating feature, or pin-pointed distinguishing feature favouring one and ousting another. The feasible options not detrimental to the object of the Act while accepting or refusing the claim may be taken into account. The competent officer was guided by the recommendation of the Town Planner, Surat Municipal Corporation. Without cogitating on the issue, he being obsessed with certain assumption and postulation,

perfunctorily disposed of the petitioner's application.

3. At the time of hearing, it was made clear by the learned advocate representing the petitioner that during the pendency of this petition the land acquisition formalities were taken on hand; necessary notification under Section 4 of the Land Acquisition Act was issued; and later on another notification under Section 6 also came to be issued on 6th September 1995. By now the acquisition formalities are over. It may be noted that the land in question situated within the local limits of Village-Karanj bears Survey No.29/2. In the notification under Section 6, the copy of which is produced at Annexure 'C', the survey numbers of the lands acquired are mentioned in the schedule, but the survey number in question is not mentioned. It appears that later on Municipal Corporation dropped the idea to acquire the land S. No. 29/2 either because the land lost the utility value or the area more than notified vide notification u/s. 6 was not necessary to acquire. In any case, it can well be said that now the Surat Municipal Corporation, does not require the land in question, necessitating a fresh consideration and of course, in the light of the above observation.

5. In the notification issued u/s. 6 of the Land Acquisition Act, there is a mention about S. Nos. 29/1/P and 29/24 and so Mr. Sompura, the learned A.G.P. at this stage submits that mis-printing cannot be ruled out, it may be S. No. 29/2 instead of S. No. 29/24. The printing being clear erratum cannot be assumed, much less when no corrigendum is issued. However, this can be taken care of by directing the competent authority that while considering the application for permission, he will verify and bear in mind the part of the land if at all acquired.

6. In the aforesaid circumstances, the petition is allowed. The orders passed by the competent authority on 21st April 1987 and by the Urban Land Ceiling Tribunal, on 27th July 1988 produced at Annexures 'A' & 'B' are hereby quashed and set aside. The competent authority is hereby directed to consider the application of the petitioner afresh verifying the acquisition of the land at his earliest but not later than 31st January 1997 in the light of the observation made hereinabove. No costs in the circumstances of the case. Rule is made absolute. Keeping the time limit in mind, the Office will send the writ immediately.

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